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May 21, 2020

VIA ECF

Honorable Jeffrey V. Brown
United States District Judge
Southern District of Texas
Galveston Division
601 Rosenberg Avenue
Galveston, Texas 77550

Re: Case No.3:20-cv-141; *Rosie Yanas, et al., v. Antonios Pagourtzis, et al.*; In the
Southern District of Texas, Galveston Division

Dear Judge Brown:

We write on behalf of all plaintiffs and plaintiffs-intervenors in the above-referenced action, who are victims and surviving families of the mass shooting at Santa Fe High School in Santa Fe, Texas (jointly, the "Plaintiffs"). We write in response to the Court's order dated May 18, 2020, to notify the Court that the Plaintiffs intend to file an amended complaint. Plaintiffs also intend to file a motion to remand this action to state court by June 1, 2020. For this reason, Plaintiffs seek an order from the Court granting them leave to file their amended complaint within 14 days of the Court's decision on the Plaintiffs' motion to remand (similar to the order that was entered yesterday in the related case of *Tisdale v. Yanas*, Case No.3:20-cv-140).

This action was removed from state court on May 1, 2020 by Defendants Luckygunner, LLC, Red Stag Fulfillment, LLC, MollenhourGross, LLC, Jordan Mollenhour and Dustin Gross (jointly, the "Removing Defendants"). The Notice of Removal was not joined by two defendants in the state court action, Antonios Pagourtzis,

and Rose Marie Kosmetatos.¹ (Docket Entry No. 1). The Plaintiffs intend to file their motion to remand within 30 days of removal, raising certain procedural and substantive defects in the Notice of Removal.

On May 8, 2020, the Removing Defendants filed three motions to dismiss (DE Nos. 5,6,7). Prior to filing the motions, the Removing Defendants did not confer with the Plaintiffs about their right to amend their pleadings, in violation of this Court's Local Rule 6. *See Defendant Red Stag Fulfillment, LLC's Motion to Dismiss and Memorandum of Law in Support*, at 2, n.1 (D.E. No. 5). On May 18, 2020, this Court entered an Order noting that the Removing Defendants had not complied with Local Rule 6, and *sua sponte* granting the Plaintiffs leave to file an amended complaint if they notified the Court of their intent to do so by May 21, 2020.

Plaintiffs wish to preserve their ability to amend their complaint but are mindful of case law in the Fifth Circuit which holds that substantial participation in the litigation before the federal district court may waive a plaintiff's right to assert procedural defects in removal. *See SkyGlass, Inc. v. PartnerShip, LLC*, 3:19-CV-1087-S, 2019 U.S. Dist. LEXIS 137111, at *8-10 (N.D. Tex. Aug. 14, 2019) (collecting Fifth Circuit case law on the issue of waiver, but holding that plaintiff did not waive objection to defective removal where it expressly preserved the procedural defect in a footnote to the amended complaint.).

Consistent with this case law, and in the interest of judicial economy, Plaintiffs therefore request that the Court permit Plaintiffs to file their amended complaint within 14 days of this Court's decision on the Plaintiffs' forthcoming motion to remand (if that motion is not granted). *See In re Carter*, 618 F.2d 1093, 1101 (5th Cir.1980) ("It is a fundamental principle of law that whether subject matter jurisdiction exists is a question answered by looking to the complaint as it existed at the time the petition for removal was filed."). A proposed order is attached as Exhibit A. If Plaintiffs' request is denied, Plaintiffs will file their amended complaint within 14 days of this letter, as instructed by the Court's Order

Counsel for Defendants Antonios Pagourtzis and Rose Marie Kosmetatos have provided consent to the proposed schedule. *See Exhibit B*, attaching email from Ron Rodgers to Clint McGuire, dated May 15, 2020. The Removing Defendants have not consented to stay briefing on the motions to dismiss until after the motion to remand is decided. *See id.*, attaching email from Andrew Lothson to Alla Lefkowitz, dated May 14, 2020 ("The briefing on our clients' pending Rule 12(b) motions is to proceed in accordance with the Judge's Order [in the *Tisdale* case], the Federal Rules of Civil Procedure and the Southern District's Local Rules.").

¹ A third defendant, Dimitrios Pagourtzis, is currently committed at Vernon State Hospital after a criminal court determined that he was not competent to stand trial; he has not entered an appearance in this action.

Respectfully submitted,

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**Pro hac vice application forthcoming*

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cc: Counsel of record via ECF